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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 891.

LOCAL UNION 429, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. of L., *et al.*,
Petitioners,

vs.

FARNSWORTH AND CHAMBERS COMPANY, INC.,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI.

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.

BASS, BERRY & SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Of Counsel.

E. L. MENDENHALL, INC., 1108 OAK STREET, KANSAS CITY 6, MO., HARRISON 1-3030

by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * *

"Sec. 14. * * *

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

APPENDIX E.

Final Decrees of the Supreme Court of Tennessee.

"This cause coming on to be heard upon a transcript of the record from the Chancery Court of Sumner County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is no error.

"It is therefore ordered and decreed by the Court that the decree of the Chancellor be in all things affirmed and that this cause be remanded to the Chancery Court of Sumner County for the execution of the decree of that Court; and for the collection of the cost of the Court below, for all of which let procedendo issue.

"The cost of this appeal will be paid by Local Union 429, I. B. E. W., A. F. of L., C. I. O., et al, principals; Cecil Branstetter, surety for which let execution issue. 2/8/57"

* * * * * * *

"It is hereby ordered and decreed that the decree entered in this cause on February 8, 1957, remanding the same to the Chancery Court for Sumner County, Tennessee, be amended by providing that since the rights of the parties have been determined, that the Chancery Court for Sumner County is to enter an order making the injunction permanent and perpetual. 2/14/57"

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FARNSWORTH AND CHAMBERS COMPANY, INC.,
Respondent.

BRIEF OF FARNSWORTH AND CHAMBERS COMPANY, INC.

QUESTION PRESENTED.

Has the Labor Management Relations Act so pre-empted the field of labor management relations in interstate commerce that State Courts are without power to enforce the provisions of State "right to work" laws?

STATEMENT OF THE CASE.

The respondent, Farnsworth and Chambers Company, instituted this suit in the State Courts of Tennessee charging that the defendant unions were picketing respondent's premises for the purpose of forcing respondent to violate the Tennessee right to work law (TCA 50-208 *et seq.*), the factual averments of the original bill being in part as follows:

> "On or about September 31st, defendant T. P. Loftis (business agent of the defendant, Electrical Workers Union) came to the office of complainant and * * * urged (complainant's) Superintendent Joyner to replace the electricians working for complainant at the job site with new employees who are members of the defendant union * * *
>
> "On the next day, defendant Loftis came back to Superintendent Joyner's office and again in a conference with Superintendent Joyner insisted that those persons working as electricians be replaced by members of the defendant Union.
>
> "Then later that same day * * * Loftis approached Superintendent Joyner and advised him that if those working for complainant as electricians on the job were not replaced by members of the defendant union, that he, the defendant Loftis would 'put up a picket line around the job' to force the complainant to employ only members of the defendant union as electricians and further that his men (members of the defendant union) would not work with the non-union men presently employed."

The original bill further alleges that the defendant Loftis and other Union officials came to the office of Superintendent Joyner and insisted that only persons who are members of the labor union should be allowed to work

at the construction site to the exclusion of those persons working at that time who were not members of the labor union.

The complainant refuses to accede to the insistencies of the defendant and avers that pursuant to the threats set out above, the Union began picketing the job site. The complaintant further says in its original bill that the picketing is unlawful and in direct violation of the Code of Tennessee.

The demurrer of the defendants does not question the factual averrments of the original bill but seems to deny the State Court's power because the matter set out in the original bill is exclusively within the province of the National Labor Relations Board.

ARGUMENT.

Under Tennessee practice, a demurrer admits the factual averments of the pleading against which the demurrer is filed, *McBrayer* v. *Dixie Mercerizing Company*, 176 Tennessee 560.

The Supreme Court of Tennessee has concluded that the averments of the original bill, as above set out, state a violation of the Tennessee "right to work" law. The sole question remains: May the Tennessee Court restrain the violation, or was its power to do so preempted from it by the enactment of the Labor Management Relations Act?

This Court has already answered the question in a definitive manner:

> "Where the State and federal laws do not overlap, no cession is necessary because the State's juris-

diction is unimpaired. This reading is confirmed by the purpose of the proviso in which the phrase is contained: to meet situations made possible by Bethlehem Steel Corp. v. New York State Labor Relations Bd., 330 U. S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026, where no State agency would be free to take jurisdiction of cases over which the National Board had declined jurisdiction. See H. R. Rep. No. 245, 80th Cong., 1st Sess. 40; S. Minority Rep. No. 105, P. 2, 80th Cong., 1st Sess. 38.

"Other provisions of the Taft-Hartley Act make it even clearer than the National Labor Relations Act that the States are left free to pursue their own more restrictive policies in the matter of union-security agreements. Because §8 (3) of the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered, §14 (b), 29 U. S. C. A., §164(b), 9 F. C. A., Title 29, §164 (b) *was included to forestall the inference that federal policy was to be exclusive.* It reads:

" 'Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.'

"It is argued, however, that the effect of this section is to displace State law which 'regulates' but does not wholly 'prohibit' agreements requiring membership in a labor organization as a condition of employment. But if there could be any doubt that the language of the section means that the Act shall not be construed to authorize any 'application' of a union-security contract, such as discharging an employee, which under the circumstances 'is prohibited' by the State, the legislative history of the section would dispel it. See S. Rep. No. 105, 80th Cong., 1st Sess. 5-7; HR. Rep. No. 245, 80th Cong., 1st Sess. 9, 34, 40, 44;

HR. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60; 93 Cong, Rec. 3554, 3559, 4904, 6383-84, 6446; 94 Cong. Rec. 3613 (April 16, 1947); *id.*, at 3617-18; HR. 3020, as reported, §13."

Algoma P. & V. Co. v. *Wisconsin Emp. Rel. Bd.*, 336 U. S. 313, 93 L. Ed. 702.

Since the petition does not present to this court a Federal question of substance not heretofore determined by this Court and since the decision of the State Court[1] in this case is in accord with the applicable decisions of this Court, respondent respectfully prays that the writ be denied.

Respectfully submitted,

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.

BASS, BERRY & SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Of Counsel.

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[1]The courts of last resort of the states wherein right to work statutes have been enacted have unanimously held that the Labor Management Relations Act does not oust from the State Court power to enforce the statute.

Woodard v. *Collier*, Georgia (1953), 78 S. E. 2d 526.

Town House, Inc., of Boston v. *Hurley*, Mass. (1950), 91 N. E. 2d 758.

Construction Labor Union, etc., et al. v. *Stephenson*, Texas (1950) 221 S. W. 2d 375.

Ostroff v. *Laundry and Dye Workers Union*, Wash. (1950), 37 Wash. 2d 595, 225 P. 2d 419.

Wisconsin ERB v. *Barbers, etc., et al.*, Wisc. (1949), 39 N. W. 2d 725.

Building Trades Council v. *Bonito*, Nev. (1955), 280 P. 2d 295.

Machinist v. *Goff-McNair Motor Co.*, Ark. (1954), 264 S. W. 2d 48.

Minor v. *Building Trades Council*, N. D. (1956), 75 N. W. 2d 139.

CERTIFICATE OF SERVICE.

I certify as attorney of record for the Respondent, Farnsworth and Chambers Company, Inc., in the above-styled and numbered cause in this court that I have this day had mailed by air mail, postage pre-paid to Cecil Branstetter, Stahlman Building, Nashville, Tennessee, attorney of record for the Petitioners, at his said proper post-office address, two true copies of this Brief in Opposition to the Granting of a Writ of Certiorari.

This 13th day of May, 1957.

Wilson Sims

WILSON SIMS,
1000 American Trust Building,
Nashville, Tennessee,
Attorney for Respondent.